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Attorney for Defendant ABC Insurance Co.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

**JOHN Q. SMITH**

Plaintiff

v.

CV. 01-1234-AS

**ABC INSURANCE CO.**, an Oregon  
corporation,

Defendant.

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**Defendant's Concise  
Statement of Material Facts**

Pursuant to LR 56.1, defendant ABC Insurance Co. presents the following statement of undisputed facts:

1. Plaintiff John Q. Smith was insured under an individual long-term disability policy issued by ABC Insurance Company. The policy provides that a claimant is entitled to long-term disability benefits only if he is "not able to perform the substantial and material duties of [his] occupation." Exhibit 1 to Affidavit of Plaintiff's Counsel.

2. Plaintiff was employed as CEO/manager/administrator of a food-processing company (Foods). See Pls' Concise Statement, para 1; Pls' Depo, p. 13, Ln.7<sup>1</sup>. As such, his

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<sup>1</sup>Relevant excerpts from plaintiff's deposition are attached to the Affidavit of John Q. Attorney filed concurrently herewith.

job duties involved executive management, problem resolution, planning, and interacting with customers, suppliers and regulatory agencies. Plaintiff's Depo, p. 23, Ln.15.

3. Although plaintiff was CEO of the company, the business was controlled by majority shareholders in Japan. Plaintiffs' Depo, p. 10, 13.

4. Plaintiff's last day of full-time employment prior to his alleged date of disability was August 31, 1999. Exhibit 3 to Affidavit of Plaintiff's Counsel. Almost immediately thereafter, the majority shareholders of the company closed the food processing plant entirely. Plaintiff's Depo, p. 31, Ln. 9.

5. Despite the plant closure, plaintiff continued to return to his job for a couple of hours a day in order to perform some duties relative to the company 401K plan. Plaintiff's Depo, p. 34-35. Other than that, however, there was little for him to do given that the plan was no longer operational. PI's Depo, p. 37, Ln. 21.

6. Prior to his last day of work on August 31, 1999, plaintiff was able to complete his job duties and get all of his work done as long as he worked during slower time periods. PI's Depo, p. 41, Ln. 19.

Dated this 22<sup>nd</sup> day of March, 2002.

Firm Name

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